

**WAGANAKISING ODAWAK STATUTE**  
**VICTIMS RIGHTS**

**SECTION I.           SHORT TITLE**

This Statute may be cited as the “Victims Rights Statute.”

**SECTION II.           PURPOSE**

The purpose of this Statute is to protect the rights of crime victims. This Statute repeals and replaces the “Victims Rights Act,” WOTCL 9.600.

**SECTION III.           JURISDICTION**

This Statute applies to victims, as defined in this Statute, of crimes under the laws of LTBB.

**SECTION IV.           DEFINITIONS**

- A.     “Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- B.     “Crime”** means a violation of the laws of the Little Traverse Bay Bands of Odawa Indians for which the offender, upon conviction, may be punished by imprisonment or fine.
- C.     “Defendant”** means a person charged with having committed a crime against a victim.
- D.     “Final disposition”** means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of a sentence by the Court.
- E.     “LTBB or Tribe ”** means the Little Traverse Bay Bands of Odawa Indians.
- F.     “Prisoner”** means a person who has been convicted and sentenced to imprisonment for having committed a crime against a victim.

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2 **G. “Prosecutor”** means the Little Traverse Bay Bands of Odawa Indians Tribal Prosecutor.

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4 **H. “Victim”** means any of the following:

5  
6 1. Any individual who suffers direct or threatened physical, financial or emotional  
7 harm as a result of the commission of a crime;

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9 2. A parent, guardian or custodian of a victim who is less than 18 years of age if the  
10 parent, guardian or custodian so chooses; or

11  
12 3. A parent, guardian or custodian of a victim who is so mentally incapacitated that  
13 he or she cannot meaningfully understand or participate in the legal process.

14  
15 4. If a victim is physically unable to exercise the rights under this Statute, the victim  
16 may designate his or her spouse or a child of 15 years of age or older, parent, sibling,  
17 grandparent or legal representative of the victim to act in place of the victim during the  
18 duration of the physical disability.

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21 **SECTION V. RIGHTS OF CRIME VICTIMS**

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23 All crime victims have the following rights:

24  
25 **A. Right to be Protected.** The following measures may be taken to protect victims as  
26 necessary and appropriate:

27  
28 1. Have police escorts to and from court;

29  
30 2. Have secure waiting areas separate from those of the accused and his or her  
31 family, witness and friend during court proceedings;

32  
33 3. Have bail denied or have specific conditions imposed on bail release such as  
34 protective orders for defendants who are found to present a danger to the community, the  
35 victims, or witnesses;

1       **4.**       Have the victim's address, place of employment, and other personal identification  
2 information kept confidential based upon the victim's reasonable apprehension of acts or  
3 threats of physical violence or intimidation by the defendant or at the defendant's  
4 direction against the victim or the victim's immediate family; and  
5

6       **5.**       Have any other action taken that is necessary to protect the victim from the  
7 accused.  
8

9       **B.     Right to Notice.** The right to reasonable, accurate, and timely notice of the victim's  
10 rights and any public court proceeding, or any parole proceeding, involving the crime or any  
11 release or escape of the accused and the right not to be excluded from any public court  
12 proceeding.  
13

14       **1.     Initial Notice.** Within 24 hours after the initial contact between the victim of a  
15 reported crime and law enforcement having the responsibility of investigating that crime,  
16 law enforcement must give the victim information about the availability of emergency  
17 and medical services and the rights of the victim.  
18

19       **2.     Notice of Charges.** The right to be notified immediately, if the Prosecutor  
20 chooses not to file charges against the Defendant or drops charges being held against the  
21 Defendant.  
22

23       **3.     Notice of Release.**  
24

25       **a.**       Within 24 hours after the arraignment of the defendant for a crime, the  
26 prosecutor must give the victim notice of whether the defendant is eligible for  
27 pretrial release and notice if the defendant is released from custody by bond or  
28 otherwise.  
29

30       **b.**       The Prosecutor may move that the bond or personal recognizance of a  
31 defendant be revoked where the victim's statement or affidavit asserts acts or  
32 threats of physical violence or intimidation by the defendant or at the defendant's  
33 direction against the victim or the victim's immediate family.  
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1       **3. Notice of Trial Process.** Within 7 days after the arraignment of the defendant for  
2 a crime, the Prosecutor must give the victim a written notice in plain English of each of  
3 the following:  
4

5           **a.** A brief statement of the procedural steps in the processing of a criminal  
6 case;  
7

8           **b.** Suggested procedures if the victim is subjected to threats or intimidation;  
9 and  
10

11          **c.** The appropriate person to contact for further information.  
12

13       **5. Notice of Sentencing.**  
14

15          **a.** Upon request of the victim, the victim must be given notice of the  
16 following:  
17

18            **i.** The defendant's conviction;  
19

20            **ii.** The crimes for which the defendant was convicted;  
21

22            **iii.** The victim's right to make a written or oral impact statement for  
23 use in the preparation of a pre-sentence investigation report concerning the  
24 defendant;  
25

26            **iv.** The address and telephone number of the probation office, if any,  
27 which is to prepare the pre-sentence investigation report;  
28

29            **v.** That a pre-sentence investigation report and any statement of the  
30 victim included in the report will be made available to the defendant  
31 unless exempted from disclosure by the Court;  
32

33            **vi.** The victim's right to make an impact statement at sentencing;  
34

35            **vii.** The time and place of the sentencing proceeding  
36

1           **b.**       The notice given by the Prosecutor to the victim must be given by any  
2 means reasonably calculated to give prompt and actual notice.

3  
4       **6.    Notice of Appeal.**

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6           **a.**       Upon request of the victim, the Court must notify the victim of the  
7 following:

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9                   **i.**       That the defendant has filed an appeal of his or her conviction;

10  
11                   **ii.**     A brief explanation in plain English of the appeal process,  
12 including the possible dispositions;

13  
14                   **iii.**    Whether the defendant has been released on bail or other  
15 recognizance pending the disposition of the appeal;

16  
17                   **iv.**    The time and place of any appellate court proceedings and any  
18 changes in the time or place of those proceedings; and

19  
20                   **v.**     The result of the appeal.

21  
22           **b.**       In the event the defendant's conviction is reversed and the case is returned  
23 to the trial court for further proceedings, the victim must have the same rights  
24 previously requested during the proceedings, which led to the appeal.

25  
26       **7.    Notice of Release.** Upon request of the victim, the Court must notify the victim of  
27 the defendant's release.

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29       **8.    Notice of Escape.** A victim who requests notice of the escape and the Prosecutor  
30 who is or has prosecuted the crime for which the person is detained or under sentence  
31 must be given immediate notice of the escape of the person accused, convicted or  
32 imprisoned for committing a crime against the victim. The notice must be given by  
33 means reasonably calculated to give prompt and actual notice.

34  
35       **C.    Right not to be Excluded.** The victim has the right to attend proceedings related to the  
36 crime for which the defendant is charged, unless the Court, after receiving clear and convincing

evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding. The victim has the right to have a support person present during such proceedings such as a family member, trusted advocate, or legal representative.

**D. Right to be Heard During Proceedings.** The right to be heard at any court or agency proceeding involving release, plea, sentencing, or any parole proceeding.

1. The victim has the right to submit or make a written or oral impact statement to law enforcement for use in preparing investigations and reports.

2. The victim has the right to appear and make an oral impact statement at the sentencing of the defendant.

3. The victim has the right to address or submit a written statement for consideration by a probation officer, a parole board or any other group or person having authority over the prisoner's release.

**E. Right to Confer with the Prosecutor.** The Prosecutor must offer the victim an opportunity to consult with the Prosecutor to obtain the victim's views about the disposition of a crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial or probation programs.

**F. Right to Restitution.** The right to full and timely restitution as provided by law.

1. Consistent with LTBB criminal laws, the Court may order that the defendant make restitution to any victim of the defendant's course of conduct that gives rise to the conviction or the victim's estate.

2. If the Court does not order restitution, or orders only partial restitution, the Court must state on the record the reasons for that action.

3. If a crime results in damage to or loss or destruction of property of a victim of the offense, the order of restitution may require that the defendant do either of the following:

a. Return the property to its owner or to another person designated by the owner; or

1  
2           **b.**       If return of the property is impossible, impractical or inadequate, pay an  
3           amount equal to the value of the property on the date of the damage, loss or  
4           destruction.  
5

6           **4.**       If a crime results in physical or psychological injury to a victim, the order of  
7           restitution may require that the defendant do one or more of the following, as applicable:  
8

9           **a.**       Pay an amount equal to the cost of actual medical and related professional  
10          services and devices relating to physical and psychological care;  
11

12          **b.**       Pay an amount equal to the cost of actual physical and occupational  
13          therapy and rehabilitation;  
14

15          **c.**       Reimburse the victim or the victim's estate for after-tax income loss  
16          suffered by the victim as a result of the offense; or  
17

18          **d.**       Pay an amount equal to the cost of psychological and medical treatment  
19          for members of the victim's family that has been incurred as a result of the  
20          offense.  
21

22          **5.**       If a crime resulting in bodily injury also results in death of a victim, the order of  
23          restitution may require that the defendant pay an amount equal to the cost of actual  
24          funeral and related expenses.  
25

26          **6.**       Instead of restitution, and if the victim or the victim's estate consents, the order of  
27          restitution may require the defendant make restitution in services in lieu of money, or  
28          make restitution to a person designation by the victim or victim's estate if that person  
29          provided services to the victim as a result of the crime.  
30

31          **7.**       If the Court orders restitution, the Court must, if the victim is deceased, order that  
32          the restitution be made to the victim's estate.  
33

34          **8.**       Any order of restitution must be as fair as possible to the victim or victim's estate  
35          without unduly complicating or prolonging the sentencing process.  
36

1           9.       Any amount paid to a victim or victim's estate as restitution must be set off  
2       against any amount later recovered as compensatory damages by the victim or the  
3       victim's estate in any federal, state or Tribal civil proceeding.  
4

5           **10.**     If the defendant is placed on probation or paroled, any restitution ordered under  
6       this section must be a condition of that probation or parole. The Court may revoke  
7       probation or parole if the defendant fails to comply with the order and if the defendant  
8       has not made a good faith effort to comply with the order. In determining whether to  
9       revoke probation or parole, the Court must consider the defendant's employment status,  
10      earning ability, financial resources, and the willfulness of the defendant's failure to pay  
11      and any other special circumstances that may have a bearing on the defendant's ability to  
12      pay.  
13

14          **11.**     An order of restitution may be enforced by the Prosecutor, a victim, or victim's  
15      estate named in the order to receive the restitution in the same manner as a judgment in a  
16      civil action.  
17

18   **G.     Right to Proceedings without Unreasonable Delay.** The right to proceedings free from  
19      unreasonable delay. If the Court is ruling on a continuance or other delay in the proceedings, the  
20      Court must consider the impact of the delay on the victim. Victims who are children, elders, or  
21      otherwise vulnerable must be given preference in setting the Court docket.  
22

23   **H.     Right to be Treated with Fairness and Respect.** The right to be treated with fairness  
24      and with respect for the victim's dignity and privacy. The victim must be treated with fairness,  
25      respect, and dignity throughout the criminal justice process. During proceedings the Prosecutor  
26      and the Court must take this into consideration when requesting or ordering testing,  
27      testimony, or any other potentially invasive act.  
28

29   **I.     Right to Return of Property.** The right to the expeditious return of personal property  
30      seized as evidence whenever possible. Law enforcement must promptly return to the victim  
31      property belonging to that victim which is taken in the course of the investigation, except that  
32      law enforcement:  
33

34          **1.**       Must not return property which is contraband;  
35



1           2.       Must not return property if the ownership of the property is disputed until the  
2           dispute is resolved; and  
3

4           3.       Must retain as evidence any weapon used in the commission of the crime and any  
5           other evidence if the Prosecutor certifies that there is a need to retain that evidence in lieu  
6           of a photograph or other means of memorializing its possession by a law enforcement  
7           officer.  
8

9   **J.       Right to Enforcement.** The right to enforcement of these rights and access to other  
10   available remedies under the laws of LTBB. Upon request of a victim, the Prosecutor must ask  
11   the Court to enforce the rights of the victim.  
12

13   **K.       Right to View Copies of Record and Evidence.** The right to view copies of reports and  
14   other evidence related to the proceeding, provided that the records will not compromise the  
15   prosecution of the case. Upon the closing of an investigation or if still open, before the statute of  
16   limitations has run on the particular crime or within one year after the case goes cold, the victim  
17   has a right to view any and all records and evidence gathered by law enforcement. Such items do  
18   not include anything that is privileged. If any of the items contain confidential information, that  
19   information must be redacted before the victim is allowed to view it.  
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## 22   **SECTION VII.                   SEVERABILITY**

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24           If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for  
25   any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion  
26   shall be deemed a separate, distinct and independent provision and such holding shall not affect  
27   the validity of the remaining portions thereof.  
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## 30   **SECTION VIII.       EFFECTIVE DATE**

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32           Effective upon the signature of the Executive or 30 days from Tribal Council approval  
33   whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council  
34   override of the veto.  
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## **CERTIFICATION**